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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. ~~183~~. ~~811~~ 385 66

WILLIAM H. HAGEDON, PLAINTIFF IN ERROR,

vs.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JULY 26, 1889.

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OCTOBER TERM, 1889.

No. 1183.

WILLIAM H. HAGEDON, PLAINTIFF IN ERROR,

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JUDD & DETWEILER, PRINTERS, WASHINGTON, AUGUST 16, 1889.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for said district, on Monday, the twentieth day of May, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and thirteenth year.

WM. H. BRADLEY, *Clerk.*

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-fourth day of March, 1888, came the plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons, and also at the same time filed his bond for costs in said above-entitled cause; which said præcipe and bond are in the words and figures following, to wit:

2 *Præcipe.*

United States Circuit Court, Northern District of Illinois.

WILLIAM H. HAGEDON, Plaintiff,
vs.
ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago, Defendant.

The clerk of said court will issue a summons in the above-entitled cause in a plea of trespass on the case on promises, to the damage of the plaintiff in the sum of one thousand dollars, and direct the same to the marshal to execute, and make it returnable to the May term of said court, A. D. 1888.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

Chicago, March 24th, 1888.

(Endorsed:) Filed this 24th day of March, A. D. 1888. Wm. H. Bradley, clerk.

3 *Bond for Costs.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

Circuit Court. May Term, A. D. 1888.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } In Assumpsit.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court; and, in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against our property for any costs taxed against the plaintiff.

Dated this 24th day of March, A. D. 1888.

SHUMAN & DEFREES.

(Endorsed:) Filed M'ch 24, A. D. 1888. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the twenty-fourth day of March, 1888, there issued out of said clerk's office a writ of summons in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

The United States of America to the marshal of the northern district of Illinois, Greeting:

We command you to summon Anthony F. Seeberger, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto William H. Hagedon of a plea of trespass on the case upon promises, to his damage, as is alleged, of one thousand dollars; and have you then and there this writ.

Witness the Hon. Samuel F. Miller, associate justice & [SEAL.] acting Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 24th day of March, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the 112th year.

5 WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ by reading the same to and within the presence and hearing of Anthony F. Seeberger, collector of customs for the port and district of Chicago, therein named, on the 24th day of March, 1888.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

(Endorsed:) Filed M'ch 24, A. D. 1888. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-seventh day of March, 1888, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause; which said appearance is in the words and figures following, to wit:

Appearance.

United States Circuit Court, Northern District of Illinois.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

The appearance of Anthony F. Seeberger, col'r, defendant
6 in this cause, is hereby entered by his attorney.

W. G. EWING,
United States Attorney.

(Endorsed:) Filed M'ch 27, 1888. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-sixth day of April, 1888, came the plaintiff, by his attorneys, and filed in said clerk's office his declaration in said entitled cause; which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, } *ss:*

In the United States Circuit Court for the Northern District of Illinois, to the May Term, 1888.

William H. Hagedon, plaintiff in this suit (which is a suit arising under the revenue laws of the United States and is brought to recover duties claimed by the plaintiff to have been illegally exacted of him and by him paid under protest), by Shuman & Defrees, his

attorneys, complains of Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises—

7 For that whereas the said plaintiff heretofore, to wit, on the first day of March, in the year of our Lord one thousand eight hundred and eighty-eight, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of one thousand dollars, lawful money of the United States, as duties under protest and in order to obtain possession of certain hat trimmings, merchandise imported into the United States for him, the said plaintiff, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiff avers that said sum of money above specified, so paid to the said defendant as aforesaid as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiff; and the said plaintiff avers that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs he, the said plaintiff, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of his, the said plaintiff's, objec-

8 tion thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid the plaintiff appealed to the Secretary of the Treasury of the United States; and the said plaintiff avers that the decision of the said Secretary of the Treasury has been had on said appeals, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeals; by means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiff the sum of one thousand dollars and — cents, lawful money as aforesaid, so illegally demanded of and under protest paid by the said plaintiff as aforesaid; and, being so liable, the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiff in the further sum of one thousand dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiff; and, being so indebted, the said defendant after-

9 wards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiff well and truly to pay

unto the said plaintiff the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested. Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified or any or either of them or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendant hath hitherto wholly neglected and refused and still does so neglect and refuse, to the damage of the said plaintiff in the sum of one thousand dollars; and therefore the said plaintiff brings his suit, &c.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

(Endorsed:) Filed Apr. 26, 1888. Wm. H. Bradley, clerk.

10 Afterwards, to wit, on the twenty-second day of August, 1888, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States of America for the Northern District of Illinois, N. Div. July Term, 1888.

A. F. SEEBERGER, Collector, &c.,
ats.
WM. H. HAGEDON. } Assumpsit.

And the said Anthony F. Seeberger, coll., defendant, by Wm. G. Ewing (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiff has above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

W. G. EWING,
U. S. Attorney, for Defendant.

(Endorsed:) Filed Aug. 22, 1888. Wm. H. Bradley, clerk.

11 Afterwards, to wit, on the fourth day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined herein thereupon come a jury of good and lawful men, to wit, E. M. Donohue, John A. Rolf, Julius Jonas, S. A. Albertson, Julius

Ludwig, Samuel Davidson, Thomas Hurlstone, I. P. Nudd, George McKinney, S. J. Block, Matt. Kilborg, and W. M. Brown, who were all duly elected, tried, and sworn well and truly to try said issue, and after hearing a part of the evidence, the hour of adjournment having arrived, it is ordered that the further trial of this cause be postponed until to-morrow morning.

12 Afterwards, to wit, on the fifth day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn; and, after hearing the concluding evidence and the arguments of the counsel, it is ordered that the further trial of this cause be postponed until to-morrow morning.

13 Afterwards, to wit, on the sixth day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn; and, after receiving the instructions of the court, the jury retired to consider of their verdict; and, by agreement, the jury, when they shall have agreed upon a verdict, may sign and seal the same and deliver it to the officer in charge and disperse.

Afterwards, to wit, on the eighth day of April, 1889, came the plaintiff, by his attorneys, and filed in said clerk's office his bill of particulars in said entitled cause; which said bill of particulars is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:* *Bill of Particulars.*

United States Circuit Court, Northern District of Illinois. May Term, A. D. 1888.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, etc. } Gen. No. 20900. W. H. Hagedon, Importers.

Suit begun M'ch 24, '88. Excess claimed, $535.80.

Claim No.	Entry No.	Description.	Whence imported.	Vessel.	Date of Invoice.	Date of entry.	Excess claimed.	Date of payment.	Protest filed.	Date of appeal.	Date of decision.
2814	6381	Hat trimmings	Paris	La Normandie	Aug. 25, '87	Sept. 19, '87	*41 95 †258 90 *103 60	Sept. 19, '87	Oct. 8, '87	Oct. 8, '87	Feb. 25, '88
2821	6459	Do.	Do.	La Baugogne.....	" 31, '87	Sept. 21, '87	†150 65 *25 60	" 21, '87	" 11, '87	" 11, '87	Do.
2835	6837	Do.	Do.	La Gascogne	Sept. 14, '87	Oct. 4, '87	†28 85 *77 90	Oct. 4, '87	" 18, '87	" 18, '87	, Do.
2839	6710	Do.	Do.	La Champagne.....	" 7, '87	Sept. 29, '87	*†94 40 †97 40	Sept. 29, '87	" 18, '87	" 18, '87	Feb. 17, '88
							†$535 80				
						*41 95	*†532 80				
						*103 60					
						*25 60					
						*77 90					
							*$249 05	H.			
		* Amount, as per	final liquidation.....				H. $249 05	*HARRIS.			

* In red ink in copy. † Erased in copy.

(Endorsed:) Filed April 8, 1889. Wm. H. Bradley, clerk.

The foregoing bill of particulars was served on the defendant's attorney April 25th, 1888.

W. G. EWING, *U. S. Att'y, for Defendant.*

ANTHONY F. SEEBERGER, COLLECTOR, &C.

15 On the same day, to wit, on the eighth day of April, 1889, there was filed in said clerk's office the verdict of the jury in said entitled cause; which said verdict of the jury is in the words and figures following, to wit:

Verdict.

We, the jury, find the issue for the plaintiff as to the samples numbered 32*a*, 512, 47*a*, 40*a*, 49*a*, 28*a*, 48*a*, 883, 6293, 39*a*, 29*a*, 6293, 38*a*, 31*a*, 44*a*, 7*a*, 37*a*, 27*a*, 41*a*, 45*a*, 43*a*, 42*a*, 3005, 6409, 36*a*, 30*a*, 46*a*, 35*a*, 33*a*, 50*a*, 34*a*, 51*a*.

We, the jury, find for the defendant as to samples numbered 239, 508, 509, 510, 504, 506, 507, 513, 514, and 515.

S. A. ALBERTSON, *Foreman.*
J. LUDWIG.
JOHN A. ROLF.
E. M. DONOHUE.
I. P. NUDD.
GEORGE McKINNEY.
MATT. KILBURG.
SAM'L DAVISON.
SAMUEL J. BLOCKS.
THOMAS HURLSTONE.
JULIAS JONAS.
W. M. BROWN.

(Endorsed:) Filed Apr. 8, 1889. Wm. H. Bradley, clerk.

16 On the same day, to wit, on the eighth day of April, in the adjourned March term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come again the parties, by their attorneys, and now come also the jury in this behalf empaneled and sworn, and the jury return into court their sealed verdict, wherein they say: We, the jury, find the issue for the plaintiff as to the samples numbered 32*a*, 40*a*, 48*a*, 39*a*, 38*a*, 7*a*, 41*a*, 42*a*, 36*a*, 35*a*, 50*a*, 512, 49*a*, 883, 29*a*, 31*a*, 37*a*, 45*a*, 3005, 30*a*, 34*a*, 47*a*, 28*a*, 6293, 6293, 44*a*, 27*a*, 43*a*, 6409, 46*a*, 33*a*, 51*a*; and we, the jury, find for the defendant as to samples numbered 239, 508, 509, 510, 504, 506, 507, 513, 514, and 515, and assess the plaintiff's damages at two hundred and forty-nine dollars and five cents.

And thereupon the plaintiff, by his attorney, moves the court for a new trial herein.

17 Afterwards, to wit, on the twentieth day of May, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

WILLIAM H. HAGEDON
vs.
ANTHONY F. SEEBERGER, Collector, &c. } Assumpsit.

Now come the parties, by their respective attorneys, and the plaintiff, by his attorney and with leave of the court, withdraws his motion for a new trial, and the court awards judgment herein. It is thereupon considered and adjudged by the court that said plaintiff do have and recover of said defendant the said sum of two hundred and forty-nine dollars and five cents, his damages, with interest thereon from time of payment, together with his costs in this behalf expended, amounting to thirty-six dollars and sixty-one cents; and the court finds that there was probable cause for the acts done herein by said defendant, and orders that execution do not issue herein.

18 On the hearing of said cause the following exceptions were taken by the plaintiff and were allowed by the court and made of record; which said exceptions are in the words and figures following, to wit:

Bill of Exceptions.

United States Circuit Court in and for the Northern District of Illinois.

WILLIAM H. HAGEDON
against
A. F. SEEBERGER, Collector of the Port of Chicago. }

Be it remembered that the issues joined in the above-entitled cause came on for trial on the 4th day of April, 1889, at a stated term of the circuit court of the United States held in and for the northern district of Illinois, at Chicago, before a jury, the Honorable Henry W. Blodgett, U. S. district judge, presiding, and the said trial continued on the 4th, 5th, 6th, and 8th days of April, 1889. On said trial the plaintiff was represented by his counsel, Mr. Percy L. Shuman and others, and the defendant by United States attorney, Mr. W. G. Ewing, and his assistant, Mr. Graham H. Harris, and at said trial divers exceptions were taken by plaintiff to the rulings of said court; which said exceptions appear more fully in the following account of the proceedings of said trial, in so far as they relate to said exceptions—that is to say: The plaintiff, to maintain

19 the issues upon his part, introduced evidence as follows:

WILLIAM H. HAGEDON, sworn in his own behalf, testified:

I am an importer of millinery and manufacturer of millinery. I have some samples here in the invoices of the imported goods in controversy. Some of the goods are made of metal—mostly metal, cotton, etc.—upon which I paid duty at the rate of forty-five per cent. as manufactures of metal. These goods in the general trade are known as hat trimmings and used as such.

The COURT: It is a cotton fabric, I suppose, interlaced with this metal frame?

A. Yes, sir. Upon some of these goods which are of the same class I paid only twenty per cent., they having been so appraised. Upon other of the goods in this invoice I paid at the rate of fifty per cent. These were trimmings that were of silk—silk hat trimmings. Upon some of the goods in this invoice I paid at the rate of thirty-five per cent.; these were cotton trimmings. Upon some other goods I paid at the rate of forty-five and twenty-five per cent.; these were metal trimmings.

(The plaintiff's claim in this suit was withdrawn except upon the goods assessed at fifty per cent. as manufactures of silk and forty-five per cent. as manufactures of metal.)

I am familiar with the class of commodities that are used in the trade for making and ornamenting hats, bonnets, hoods, etc. The principal millinery commodities are such as ornaments, gimps, jet trimmings, laces, and ribbons, some velvets and satins, some tissues —the general variety of trimmings.

Q. Is it easy to distinguish in trade the trimmings that are adapted for millinery purposes from trimmings which are not so adapted?

A. I think trimmings adapted for millinery purposes are generally known as millinery trimmings. The samples I have are all known as millinery trimmings. I produce them in their order for identification. This is No. 883, a jet galloon; it is a millinery trimming. No. 7, I think, is in the same invoice; belongs to the same class; it has a particular name; is a fancy galloon; 6409: this is a fancy gimp, 6293, and is of the same nature. I have more samples here, but they are not numbered.

Q. State what millinery goods are made of. Are they made of all sorts of material?

A. Various kinds of material. Some are made of cotton, and a great many galloons are made of fine wire trimming. Netting and beaded goods of fine wires are made of glass, jet, lace, worsted, silk, and cotton. My experience has extended in similar goods twenty years in the principal markets of this country.

Q. Is there any difficulty among merchants in distinguishing what articles are and what are not adapted to the millinery trade?

A. I think they are readily known as being adapted chiefly for the use of millinery, and they are kept by millinery houses. There is a class of dealers who are known as millinery dealers, and that has always been so during my experience. There are some other

samples, but they are either at the custom-house or with Mr. Shuman. I have here a variety of samples. This package of samples represents my goods. They represent a variety of items, but they all belong to the same class—millinery articles. They are millinery trimmings.

On cross-examination the witness answered, detailing with great particularity the respective descriptions and component ma-
21 terials and some of the names applicable to the various samples which had been produced—as, for instance, sample No. 883 was a jet galloon made out of jet material, partly beads, partly glass, partly wire; No. 7, a fancy galloon composed, I think, of glass and wire in a variety of shapes—I presume they come under the head of beads; I think this is all wire and beads; it is a piece of glass made in the shape of a galloon strung on flexible wire and woven into shape; 6293 goes by the name of galloon or gimp; it is equally understood as a hat trimming; it is made of wire thread, silk, and metal wire mixed with, as far as I can discover, a sort of cheap silk; no cotton in it; 6409 I said was also a fancy gimp, composed of wire thread and cotton; used as hat trimmings also. I do not know the entire purposes it could be used for.

Q. I hand you sample numbered 27*a* and ask you what the trade name of that sample is.

Objected to by counsel for plaintiff as immaterial and irrelevant, and on the ground that the trade name cannot affect the determination of the dutiable character of the article in question.

The COURT: If the goods have a trade name which brings them under some particular clause it is proper. Exception.

A. This comes under the head of galloons; there is no special name for it; it is made principally of wire, and there may be a little cotton in it—I mean tinsel wire, a sort of metal thread. The next article, 28*a*, I should call a gilt gimp, made of the same material, cotton and wire thread; the next is 29*a*, which is the same. The next, 30*a*, is a bead lace; it is made of cotton and wire and beads.

No. 31*a* is a metal cord made of metal thread only. No. 32*a*
22 is a fancy braid; consists of straw, metal wire, and some cotton; 33*a* is a fancy cord, consisting of metal wire and cotton; 32*a* would go under the name of fancy trimmings, not exactly a galloon, but of metal wire and thread.

Q. So the general trade name is trimmings and the special name is fancy trimming?

A. Yes, sir; 35*a* is a fancy cord, consisting of the same material, metal wire and cotton; 36*a*, a silver galloon of tinsel thread and cotton, linen and metal; 37*a* is a fancy edge, made of metal thread and beads; 38*a* is a fancy galloon, made of wool, cotton net, and steel beads; 29*a* is a fancy galloon, consisting of tinsel thread and cotton; 40*a* is a fancy gimp, made of metal thread and cotton—most metal thread, very little cotton; 41*a*—this trimming has a specific name in the invoice; it is a fancy edge, consisting of cotton thread and metal thread; 43*a* is the same; 42*a* is a cord, consisting of silk

and metal thread; 44*a*, a gimp consisting of wire and beads; 45*a* is the same as the last—glass, wire, and beads; 46*a*, a cord consisting of cotton and metal thread, and 47*a* is a jet edge, consisting of jet and cotton lining to hold it together; 48*a* is a beaded cord, consisting of beads and wire metal; 49*a* are mourning beads, made of a sort of composition of glass; 50*a* is a fancy lace, consisting of chenille; chenille is silk; this is silk, chenille, and cotton thread; 51*a* is a beaded lace—that would be the proper name for it—and it consists of cotton, tinsel, and glass beads. This tinsel I speak of is a metal of some sort. I think this metal wire is known as tinsel.

23 Redirect examination by plaintiff's counsel:

There are a great many different trade names for millinery trimmings. There are cords which are not millinery cords, and gimps, laces, and beads which are not millinery gimps, millinery laces, and millinery beads, and there are bead trimmings that are not millinery trimmings. All of these articles—cords, gimps, laces, bead ornaments, etc.—which I have mentioned are all trimmings of some kind, and these are all trimmings generally known as hat trimmings. There are cotton gimps which are not trimmings for hats, but these are not such articles. There are various kinds of cords and galloons which are not for trimming hats, and various kinds of laces and ribbons which are not used for trimming hats. I produce a sample of the ribbons named in this invoice. The ribbons that are here are hat trimmings; they are made of silk or mostly of silk.

Q. We notice that you say some of the articles are spoken of as fancy cords, fancy edge, or silver galloon, or fancy galloon. Such a name does not particularize this special article to the exclusion of all other galloons, does it?

A. Fancy cord or fancy galloon is generally known as a trimming for millinery purposes and for no other, and there are cords which are used for perhaps other purposes, and they are designated so. That is one of the names which help to characterize it as a millinery article, and it is the same way when we speak of fancy ribbons.

Recross-examination:

Q. When you use the expression "millinery trimmings" you cover everything that ornaments hats and that goes onto a hat, except the form, don't you? What do you call that wire thing you see in a window that you build up a hat on?

A. That is a frame.

24 Q. Every thing that goes on that frame from the time the hat-maker undertakes to make a hat or a bonnet of it for a lady until it is completed you call a trimming, don't you?

A. There are articles put on there that may be used for other purposes, but these goods we buy are principally bought for millinery trimmings.

Q. Every thing you use on a hat from the time you commence to dress it—a lady comes down to order a hat made in a certain way,

and you commence to dress it—every thing you put on that until the hat is completed and delivered to the lady is covered in your business by the general term "hat trimmings," is it?

A. Yes, sir.

Plaintiff's counsel:

Q. Will you kindly describe the making of a hat? What is the body? What is the hat itself, and what is the trimming of the hat?

A. The body of the hat is made of cotton material called buckram, or a net or wire, as the case may be. In some cases it is made out of material which is heavier. It is the body of the frame.

Q. Sometimes of straw, sometimes of felt, and sometimes of wool?

A. Yes, sir; I am speaking more of the shape—the way the goods are made afterwards. Then there are shapes that are made of straw, and also of different materials. We have this season, for instance, shapes made partly of ribbon and partly of these fancy gimps. The crown—the foundation—is made of that, and they are trimmed afterwards with ribbons and velvet hat trimmings. It consists of a light material of velvet used for millinery purposes; also satin cords and these gimps I have mentioned here.

Q. The articles that are thus used in the millinery trade for trimming a hat after it is shaped and formed are staple commodities that are recognized in the trade, are they not?

A. Those commodities are chiefly known and adapted by the millinery trade.

Q. You distinguish a trimmed hat from an untrimmed hat in the trade, do you not?

A. Yes, sir.

Q. Do you deal in both?

A. Yes, sir.

Mr. C. C. CUMMINGS, a witness called for plaintiff, testified:

My firm is James H. Walker & Company. I am familiar with the commodities that are extensively used for making and ornamenting hats, bonnets, and hoods; have had a commercial experience in that line about thirty years, having sold to consumers and to the general trade as a jobber—that is, to the manufacturers of these goods—and dealt in them at wholesale, and am in that business now. The staple commodities that are millinery trimmings I should say were gimps, bead ornaments of different qualities, nets, laces, and ribbons. During my commercial experience it has always been the fact that there existed a large class of articles that had their substantial value for millinery purposes in their adaptation to millinery uses.

Q. Was it true that persons in the trade could readily distinguish articles thus adapted from others of their kind?

A. Yes; I should think it was necessary for them to be posted in those commodities to be successful. Such commodities this season, I think, come under a good many names, designated largely by their colors, different manufactures having different names. In the article of ribbons I know that is so very much.

26 Q. In respect to laces and gimps and cords and galloons and ribbons and the edges, as a matter of fact, are they ever used for anything else except for trimmings?

A. They are not used for anything else but trimmings—that is, to trim something with, some part of a costume. I think that the gimps and the cords and the laces and the ribbons that are not used, commercially speaking, for hats and bonnets are readily distinguished from these. I think the majority of them are used for that. I know, as a millinery man, I should not use any amount of them outside of the millinery trade.

Q. That is the chief use of that class of articles?

A. Yes; I think that is the experience of everybody. That is a result of my thirty years' experience.

Cross-examination:

Gimps are largely used this season and always have been, in my experience, at least in hat trimmings. Of course, they are used outside of that this season, especially these galloons this gentleman speaks of. A galloon consists of either silk, cotton, or worsted, with a gilt metal effect. A thing may be used as a hat trimming this season and not so much next season, being then rather past age. We want a new style with new hats, every thing new we can get, twice a year, if we can get them. Whether a gimp or a galloon is used on a hat or a dress the name of gimp and the name of galloon particularizes a special kind of goods that are classified as such; and if you call for a gimp I should take it for granted you wanted it for a hat material; not altogether so as to a galloon of this size. These wide galloons that are made similar to our ribbons are used largely for dress goods this year, more so than they
27 are for hats, but that class of trimmings you have there would be classified strictly as millinery goods.

By plaintiff's counsel:

Q. As staple commodities, then, these particular cords and gimps have their chief use for millinery purposes?

A. Yes, sir.

Q. And the other articles you have mentioned have their chief use?

A. Yes; I claim ribbons are under the same head. No importer can afford to import ribbons or carry them here from our home production; we could not outside of the millinery business. The majority of them are used as millinery goods—come under that head.

Q. There are special ribbons, are there not, such as sash ribbons and show ribbons, that would not be millinery ribbons?

A. There are few, comparatively speaking, but there are some such.

Recross:

By millinery I mean respecting hats and bonnets. The word has never meant anything else, in my view.

B. P. BOTSFORD, called for plaintiff, testified: I am of the house

of D. B. Fisk & Co., doing business in New York and Chicago, and one of the principal millinery houses of the country. I don't know of any larger one; ours, I think, is the largest. I am familiar with the commodities that have been extensively dealt in for many years and used for making and ornamenting hats, bonnets, and hoods. My experience over that class of commodities extended sixteen or seventeen years. They are called millinery commodities. The staple millinery trimmings in the trade are satins, silks, velvets, nets of all kinds, crepes and ribbons, flowers, feathers, ruches, ornaments, laces
of all kinds, galloons, beads, cords, a variety of all kinds
28 and of all sorts of material. Beads are used for trimming; they are not used very largely now unless they are manufactured into something so that they can trim with them. Unless the trimmings be specially adapted to millinery purposes we do not deal in them. There are bead ornaments which are adapted to millinery trimmings, but so far as they are commodities for millinery purposes we deal in them. Such class of commodities of bead trimmings are usually made of glass and jet and different materials strung on wire, especially this year. There are millinery velvets and dry-goods velvets. I think most all ribbons are millinery ribbons or trimmings. Plushes and satins are largely used as millinery trimmings, or have been heretofore; possibly not so largely this year. I do not know as I could tell the difference between a millinery satin and a dry-goods satin, but a millinery velvet is easily distinguished by its being of a softer and more pliable character. I don't think it is as heavy, possibly, as the dry-goods velvet; at all events it has special characteristics which distinguish it in the trade.

Q. Does the class of articles you deal in have substantial commercial value because of their chief use for millinery purposes?

A. I suppose they do; they charge us more for them, I guess. We sell for trimming trade all over the country at wholesale only; import and buy goods of domestic manufacturers. The chief use of the goods represented by this bunch of samples is all for millinery purposes, so far as I can see. We have a great many of them in our importations; they are all used in the millinery business. For instance, take the wire and bead lace and you cannot put it on
29 anything except a hat or a bonnet. You could put it on your pants if you wanted to, but it would not be the thing to put it there. Beaded lace is put on something that has to be trimmed; you can use it in such a manner as to make a hat attractive; you might put it down here (indicating), but there would be no necessity for having wire in it. There are beaded laces that are adapted for dress trimmings, but those are not these articles. They are readily distinguished from bonnet laces. Some of these articles here we call gimps and galloons.

WILLIAM H. HAGEDON further testified: I produce samples respecting the balance of the goods. Those are all millinery trimmings. Here is a ribbon, No. 504, that is a millinery ribbon for making bows and trimming hats; this has two faces to it, so it can

be shown when it is trimmed, showing both sides, and it is expressly manufactured for millinery use. So is No. 506, which is a sample of ribbon mixed with tinsel braid; it is a hat trimming; its chief use is for bonnets and hats; 507 is for the same use; it is a brocaded ribbon. No. 239 is a ribbon manufactured more for making small turbans; it is made for the crown of hats; there are two faces to it, so that both sides can be equally used to advantage; it is used wholly for millinery purposes; it is a double-faced watered silk, a special article, used wholly for hats and bonnets. No. 508 here is a mixed ribbon made of fancy plush and silk; that is used for trimming hats. No. 209 is an embroidered ribbon chiefly used for trimming hats; it is an embossed ribbon with tinsel lace, a special article. No. 510 is another kind, being a silk and plush
30 ribbon; was also made for the millinery use; that is its chief use. No. 511 is a gold lace used for hat and bonnet trimming; for nothing else that I have ever seen or know of. There are gold laces used for other purposes, but they are not made of the same style as this. This is made of wire thread. The wire thread is wound around the wire, made purely of metal.

Q. You say there are other gold laces that are used for other purposes. What other purposes are gold laces used for?

A. For some fancy goods or something of that sort, but not like this.

Q. All sorts of uniforms?

A. That is a different kind of lace. No. 512 here is a special article for the making of bonnets, made of silk, velvet, and glass beads, used only for the purposes of making and trimming bonnets and hats. 513 is a watered velvet. Watered velvets have been used for other purposes, but this is made of a very light texture for millinery use exclusively; it is silk. Those that are used for other purposes differ from this in that they are of a heavier body and wider. These are a narrower width and of a light weight. 514 is an uncut velvet used solely for millinery purposes, and is a special article made of silk. 515 is what is called shot silk, a sort of changeable silk; shows from both sides; in trimming it shows from one side as well as the other; it is a cloth. I do not know that it is used for anything else except trimming—I mean trimming of hats and bonnets. It was a special article when it came out; things change very often; the demands for matters of this kind are continually changing as the seasons come. I think I have pro-
31 duced samples of all I have been able to find on these invoices. These are all trimmings, the chief use of which is for hats and bonnets.

Cross-examination:

I do not know anything about the uses to which these goods are put outside of the millinery department, because I import these wholly for trimming purposes.

Q. Do they have any substantial commercial value at wholesale or any other use than for millinery purposes?

A. They have a commercial value for millinery purposes only.

JOSEPH R. DICKINSON, called for plaintiff, testified:

I am familiar commercially with the commodities that are used for making and ornamenting hats, bonnets, and hoods, and have dealt in such commodities at wholesale, my experience covering the principal markets of the United States for such commodities, as, for instance, New York, Chicago, Philadelphia, Boston, San Francisco, St. Louis, and Cleveland, and extending over that class of commodities thirty years; name of my house, Meyer & Dickinson, New York and Philadelphia. The staple commodities which are trimmings used for making and ornamenting hats, bonnets, and hoods are ribbons, velvets, plushes, gauze materials, malines, crepes, plushes and fancy plushes, surahs, turquoise, chinas, marseillings—a great variety. I should say that a merchant of ordinary experience is able to distinguish commodities which are trimmings of this character from commodities of a similar kind which are not such trimmings. I think I can so distinguish. As to these samples produced by plaintiff, I should pronounce this one (7512) a millinery trim-
32 ming or material for making bonnets. These (504, 506, 507) are millinery ribbons for trimming hats and bonnets. This (239) I should designate as a sash ribbon; that is a special article. There are a class of ribbons that are well known as sash ribbons, and from, generally, about nine to fifteen inches in width, or, as we say, from ninety lines up to 125 or 150. This (510) is an article which can be used for either purpose. It can be used for millinery and also for dress purposes. Its chief use, I should say, was more for dress trimmings. Sample 508, that could also be used for both purposes. As to its chief use, that would depend upon who imported. A millinery house would import that for millinery use exclusively. A dress-trimming house I should say would import it for dress trimming. That would apply also to this sample, 510. That is a ribbon for a foundation of a plush effect. The watered ribbon could be used also for millinery purposes, but I would judge that would be more suitable for a sash ribbon. Samples 504, '6, and '7 are exclusively millinery. 509 would rank same as 510. The bullion lace we do not deal in. I should pronounce that millinery, although we never deal in those. There are laces which are not for millinery, but we do not deal in laces; chief use of 515, it would depend on its width. If it is 16 inches, then they would be for millinery purposes. If they were wider I should say they were more adapted for dress purposes. 514 is exclusively millinery. 513 is a velvet which has its chief use — millinery.

Cross-examination:

I live in Philadelphia. My main business house is in New
33 York. I have charge of the Philadelphia end of it; am also engaged in manufacturing ribbons at Paterson, New Jersey. We import ribbons and the other things I made mention of. We have other classes of goods than millinery. I came here to witness the trial of this case; not directly interested, but have similar cases at Philadelphia.

SIMON R. KOHN, called for plaintiff, testified:

Am familiar with the commodities which are known as trimmings used for making and ornamenting hats, bonnets, and hoods, and have dealt in such commodities in wholesale, my experience extending over them twenty-two years in the Philadelphia market. My firm name is Kohn, Adler & Co.

Q. Will you please tell the court and jury what are the staple commodities which are trimmings used for making and ornamenting hats, bonnets, and hoods?

A. I should give the same answer Mr. Dickinson gave. My experience enables me to distinguish such things when I see them from others of their kind. A merchant of ordinary experience in the trade should be able to distinguish millinery goods from others of their kind. My house is a millinery house. We sell to the millinery trade and to the dry-goods trade. We deal in such goods as this package of samples.

Q. Please state whether these are millinery trimmings or not. If there are any of them that are not, pick them out.

DEFENDANT'S COUNSEL: I am willing to admit that a large majority of those things are used in the millinery trade; there is no controversy on that.

34 A. I would say that these goods were imported for the purpose of—they are bought and sold for decorating and ornamenting hats and bonnets. These samples of ribbons are all millinery ribbons, used for trimming hats and bonnets; that is decidedly their chief use. As to the velvets, 513 is a millinery velvet and 514 is what we call millinery piece goods, chiefly used for making hats and bonnets, bonnets principally. This (indicating gold lace) is a millinery lace, used for making lace bonnets and lace hats, and this also; and this (referring to sample 239) is a sash ribbon; its chief use is for decorating dresses, and it can also be used for making and ornamenting hats; its general use is for dresses, on account of its width. No. 512 is an article used for making bonnets, covering the crowns of bonnets principally. This sash ribbon is what they call two-tone sash ribbon, one coloring on one side and another coloring on the other.

Cross-examination:

Have been in the city since Tuesday; came here on this business. We are interested in the issue and have similar suits pending; so is everybody who has millinery bills to pay.

ADA WALKER, called for plaintiff, testified: Am familiar with the articles that are used as trimmings for hats and bonnets; have had about ten years' experience in that line of goods, both in buying, selling, and using. According to my experience, persons in the trade are able to distinguish trimmings which are for hats and bonnets from trimmings which are not for hats and bonnets; it is so with ribbons, laces, and velvets, and with trimmings of the miscellaneous character indicated by the samples before me, which are all

used for hat trimmings; that is their chief use. Those gold
35 laces are used for hats and bonnets, hat crowns, and various ways in trimming hats and bonnets. Bonnets are smaller than hats, generally worn tied under the chin; hats are worn without ties, and are larger, set over the face and set back over the head. There are many different styles, of course. There is a large class of dealers in trimmings for both hats and bonnets. The chief use of these ribbons is for trimmings—for making bows, ties, etc., for hats and bonnets; I use these articles myself, and they are used under my superintendence for trimming purposes for hats and bonnets. I am connected with plaintiff's house, in Chicago.

Cross-examination:

The hat I have on is trimmed with an imported ribbon which can be used for some other purposes, but is used generally for millinery; so with this other ribbon before me. The black piece of goods at my right hand (meaning the velvet) is used for millinery, and so intended. I have been in other business besides millinery; in dry goods and dress-making—about three years in the latter, which I quit about seven years ago. The ribbons used for millinery are different from those used for other purposes. These are millinery ribbons. I do not know that I can just explain about the difference; I can tell them when I see them. The chief use of the imported ribbons is for millinery.

The COURT: Is there not a large amount of ribbon used for other purposes connected with ladies' dresses and trimmings, etc.?

A. Yes, sir.

Q. Are those imported as millinery goods and then di-
36 verted to other uses?

A. I suppose other houses could import them, but the millinery houses import them for the purpose of millinery. Millinery ribbons are generally this type of ribbon (indicating). If they are imported for a dry-goods house they are generally plain, but we use all ribbons in millinery. So far as my experience extends, the chief use of ribbons is for trimming hats.

(By the district attorney:)

Q. What is the difference between hat ribbons and dress ribbons?

A. Hat ribbons are a better quality.

Q. A hat ribbon, then, is a better quality of ribbon than a dress ribbon?

A. I know ribbons are generally used for hat purposes. I said you could use a hat ribbon for a dress ribbon if you choose. You can use any ribbon for any purpose you want to, so far as that is concerned. A hat ribbon is generally supposed to be a better quality of ribbon than a dress ribbon.

At this point the plaintiff offered evidence tending to show that the plaintiff protested and appealed against and seasonably instituted suit for the exactions complained of as prescribed by the statutes.

The defendant then adduced testimony in substance as follows:

M. A. ROBERTS, called for defendant, testified: I am a dress-maker at 302 Erie street, Chicago. I know all about trimmings, both dresses and bonnets.

Q. I hand you some samples which were introduced by the plaintiff yesterday and ask you whether or not any or all of them are used in trimming dresses.

A. This class of goods is, largely.

Q. Are they used also in trimming hats?

A. Yes, sir.

37 Q. In what proportion are the same goods used on hats in respect to dresses?

A. About three times as much on dresses as on hats.

Q. What sort of goods is that you have on your dress there?

To this question counsel for plaintiff objected as calling for immaterial and irrelevant testimony; which objection was overruled by the court, and counsel for plaintiff then and there duly excepted.

A. We call it tinsel embroidery. Where the hat is trimmed with this kind of goods the dress is trimmed and then the hat is made to match it, three times as much being used upon the dress as on the hat, about—the same trimming. This sample, 239, is a sash ribbon, principally used for dresses. These ribbons (504, 506, 507) are largely used on dresses, tea-gowns, and matinées.

Q. In what proportion are they used on dresses as compared with their use on hats and bonnets?

A. From three to five times. Sample 510 is either a dress or hat trimming.

Q. Used in the same proportion as the other?

A. All goods are used in the same proportion. 508 is a dress trimming; always the same proportion, because a little piece on a dress would look foolish, and therefore you have to put a good deal on some dresses, and not so much on a hat, because, to look well, you have to trim a good deal in a dress. Sample 509 is a dress trimming or hat trimming, as you like. 513 is used either way. 513 also is used both for dress and hat trimmings, principally dress goods. 514 I do not think is used in dresses.

The COURT: What do you call that—a gimp?

A. We call it an embroidered gimp; we call it a brocade;

38 we call it several things. I do not know the exact name of these things. It is the same class of goods.

Q. Are not dresses, generally speaking, trimmed with ribbons?

A. Very largely this season. On that small garment there is about fourteen yards, and yet there is not sufficient on it. Exactly the same kind of ribbons are used on dresses that are used on hats. If a dress is trimmed the hat is trimmed to match it.

Cross-examination by plaintiff's counsel:

All the articles which have been shown me here are trimmings.

Q. What you mean to say is that when these trimmings are put

on dresses it takes about three times as much of the trimming to trim a dress as it does to trim a hat?

A. Yes, sir; more; sometimes twice as much. I do not trim hats; the hats are made after the dresses are trimmed, generally. I make a costume, and the lady gets the hat wherever she finds one that suits her, or that she may order, trimmed from the same trimming; some go to Ballenberg's and some somewhere else. I consume these trimmings; I do not sell the trimmings separately, only for my own use. I buy them generally at wholesale of a New York house, Johnson & Dobbs or Morrison's, New York; they import from Paris direct, and then the jobbers come on here and I buy from the jobbers. Morrison has a millinery department in New York; I don't know about Johnson & Dobbs having one; I did not go into their house.

Q. Have you seen these goods sold at wholesale in Chicago?

A. I have not looked; have had no occasion to look.

Q. Which particular trimming is this trimming you have spoken of as having on your dress like?

A. It is like most of these patterns; tinsel brocade, we call
39 it; some call it galloons and others call it gimp, but when I speak of gimp I mean another article. Here (508 and 509) are beaded goods; mine are not; mine are tinsel goods, silk and tinsel; it is embroidery done on a machine in Paris.

Q. How large have your purchases been of these tinsel trimmings?

A. Well, I could not say; it might be fifty dollars a month; it might be two hundred dollars a month; it might be two hundred dollars a year or six hundred dollars a year; could not tell about that. Every season there is a little change, but not enough to make any difference in the material. The foundation is nearly always the same. Sometimes they are woven on wool and sometimes on satin, sometimes on cashmere; sometimes on flannel; these are net which have been in use for more than twenty years. We use black a good deal, not so much in color, but still a great deal. I use some wire trimmings, but we do not use very much in dressmaking. There is very little used in millinery that is not used in dresses, not even the round wire; we use everything just the same as a milliner. We use the round wire, flat wire, and gimps of all kinds, and all sorts of braid and chenille, just the same as they do in the millinery business.

Q. Are there some ribbons that are specially adapted for bonnet trimmings?

A. I do not know of any; I never heard of any.

Q. Are there not some trimmings especially adapted to trimming misses' hats with?

A. Not any. There is one thing we use in mourning goods that gentlemen use in their hats; it is a heavy quality of grosgrain, and there are ribbons from an inch to two inches wide; we use some in making black goods. I am giving the result of my own
40 experience. I think I have a general knowledge of all dressmaking and millinery findings. I think I understand them thoroughly.

Q. Is it your observation that every thing that is used in the millinery trade is also more or less used in the dress-making trade?

A. Yes; every single article.

Q. There is not any article used in the millinery trade that dress-makers do not use?

A. Not a single article. In the millinery business they do not use half the quantity that we do.

Q. Do you mean any particular article?

A. Any article. We use more than double, treble, and sometimes twice that much.

Q. That is, on a particular costume?

A. Yes, sir.

Q. Do you know of any houses in Chicago that sell dress trimmings exclusively?

A. No, sir; I think you can find in any house in Chicago anything you want—pretty near it. If not, you can send to the importer in New York and get what you want.

Q. You have heard of dress trimmings, have you not?

A. Yes, sir; anything you have a mind to call a dress trimming is a dress trimming.

Q. Don't you know some houses that deal in them?

A. No, sir; I have not any occasion to go to any special houses; I do not confine myself to any house.

The COURT: Mrs. Roberts, there was a house a few years ago here, Hotkin & Palmer, that confined themselves largely to trimmings, did it not?

A. It must have been before I was in the business. I have never been there, never patronized them, and do not know anything about that house. Even the frame of a bonnet is the same
41 material that is used in making dresses—that is, we take from a piece of silk to make a covering for the frame, and on that mount the ornaments; they are feathers or beads, or cords or galloons, or any of these trimmings. I buy ribbon when I want to at Fisk's, by the piece or by the dozen pieces. As to silks, they can buy them by the piece, of course; buy them as they like, and get the length we want, except ribbons; in ribbons they have to take the piece. Any of these ordinary goods that are made into dresses can also be made into hats and bonnets. In making an evening dress I most always cut off a corner to give to the lady who owns the costume for her to go and get a hat. She can use that piece or not, as she likes.

Q. Fashions change very much from season to season, do they not?

A. In this country the American people want a fashion every week. In Paris it lasts a year or three years. This year ribbons and laces are used very much; for hats, feathers and flowers on the same hat make the handsomest. Some ladies wear a very plain costume, but there is more or less ribbon and a great deal of jet used; but no matter how plain the dresses their bonnet must be well trimmed.

Q. Are there a great many people in the country who have their hats trimmed quite differently from their dresses?

A. Not many.

Q. Some who have dresses not trimmed at all?

A. Their hats are trimmed a little; they are generally made then of the material and velvet or the material and a little ribbon. It all depends on how much of a pocket-book they have got; the quantity of the trimming depends on this. I have seen a lady wear a hat that was not trimmed at all. That is not a very general usage.

42 As a general thing, the hats are made becoming, whether they are made of trimming or made of two materials. You cannot speak of all classes, because some people, perhaps like myself, have worn a bonnet for three years and have not changed it. Of course, we cannot go by that at all; I am speaking of fashionable people.

Q. As a lady of experience and sagacious observation, what would you say were the principal trimmings used on hats for twenty years—take it all in all, for twenty years?

A. I have the plate from 1809 until now. I ought to be able to know. I do not know that I can remember, but should say ribbons, flowers, and feathers, just the same as to-day.

Q. What should you say were the principal millinery commodities—the staple millinery commodities—I mean for large dealers?

A. Feathers, flowers, and a little piece of ribbon—some kind of laces; last year they were worn very much for the races, but not since. We make entire dresses of lace now, and ribbon—entire dresses. There is not very much neck and less sleeves. Some dresses are made of lace.

JOHN G. SHEDD, called for defendant, testified:

I am department manager for Marshal Field & Company, in this city, which is one of the largest dry-goods stores in the world. I am in the lace, embroidery, neck-wear, and general lace fancy goods department. These samples, in their present condition, do not belong specially to my department. At times we have a great quantity of ribbons in a manufactured state.

Q. What do you mean by a manufactured state?

43 A. They are used for a large variety of purposes after they are manufactured, largely for toilet purposes; made up in toilet articles, and used also largely for draping curtains—anything that pertains to the toilet in general.

Q. Is there in your department or to your knowledge of the subject-matter of ribbons any such thing as exclusively millinery materials in ribbons?

Objected to; objection overruled; plaintiff excepts.

A. To my observation the predominant use of ribbons is largely for other purposes than millinery, and the same thing is true of the samples here in evidence as of other ribbons in a general way. No. 239, I should say, is used almost entirely for sash purposes—dress decoration. The cords and galloons here do not come under my observation.

Cross-examination:

I only speak of the ribbons in a general way, and their uses.

Q. Are these what they term brocaded ribbons (indicating)?

A. I should say they were not strictly brocaded ribbons. I do not deal in ribbons at all except in a manufactured state, and then it matters very little what the ribbon is, provided the constrast is right. I mean by manufactured state when it is already applied to the completed article. I do not buy ribbons at wholesale myself; am not the ribbon-buyer nor the ribbon-seller. My familiarity with the use of ribbons is derived from observing them upon the commodities that I deal in. The gentleman in our establishment who buys and sells the ribbons at wholesale is, I think, Mr. Mills, in the department of which Mr. McWilliams is the head. Mr. Garfield is our millinery man in the retail department. We have
44 various millinery articles, of course, in our establishment, but no department in the wholesale department which is confined exclusively to millinery, although we have most millinery articles. In the retail department we have a millinery department.

Q. What are the staple millinery commodities?

A. They are ribbons, laces, velvets, brocades, and things of that nature, and ornamental articles and things of various kinds.

Q. Is it not your observation, as a commercial man, that people experienced in the millinery trade readily distinguish the goods that are available for that trade from others of their kind?

A. I should think a good milliner ought to know his business pretty well. I should not like to criticise a milliner and say he did not know his occupation; I should think he did not.

Q. From your limited experience in ribbons would you venture an opinion as to what the chief use of ribbons generally was throughout the country?

A. Yes, sir; from long observation I would, unqualifiedly.

Q. Would you say there did not exist a class of ribbons that were specially adapted to the millinery trade, and that were not adapted to other uses?

A. I should say occasionally there might be a ribbon that might be a millinery ribbon pretty near exclusively, perhaps, but not often. I should say there are such classes of goods. I should judge these ribbons here might be used equally well for millinery or dress trimmings.

Q. Do not the commercial values of ribbons change according to the fashion?

A. The commercial value according to the fashion will vary. They are sold largely at various times, and the fashion makes them good or bad. Of course, a thing might become by some
45 change of fashion not desirable as an article of sale for any purpose.

Q. Then its value depreciates the next season, does it not?

A. Perhaps not its value; it depends somewhat on the state of the market.

Q. Its merchantability?

A. Yes, sir; the merchantability of any merchantable article does depreciate.

Q. As a commercial man, if goods like that are brought in for the millinery trade, does not their merchanability depend upon the demand for that trade?

A. You say if they are brought in for the millinery trade and if they are sold for millinery purposes?

Q. Yes.

A. With all those "ifs," of course, their value would depend entirely upon that.

Redirect examination by defendant's counsel:

I could not answer whether our house imports ribbons similar to this kind here. I don't know. Being out of my department, I could not answer the question.

Q. Are there such things as braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, or whalebone?

A. Yes, sir.

Q. (Showing sample 32*a* to witness.) Is this an article well known in trade and commerce?

A. In trade, among lace people; I am not familiar with the article itself; it is composed of tinsel, bullion, and straw. (32*a* was one of plaintiff's samples.)

46 JACOB MEYER, called for defendant, testified:

I am connected with the dry-goods house of Schlesinger & Mayer; I buy for certain departments ribbons, trimmings, buttons, and handle goods like some of these samples here.

Q. For what purpose are those trimmings used?

A. They are used for trimming dresses and hats, as near as I know, and various other purposes; ornamenting ladies' costumes.

Q. Are they used on cloaks and jackets and in other parts of a lady's costume?

A. Yes, sir.

Q. From her head down to her feet—that is to say, the bottom of her dress?

A. That I don't know.

Q. Are they used largely in costumes of actors and actresses on the stage?

A. Showy combinations, showy colors are; yes; to make a good effect.

Q. So far as your experience goes, for what purpose do you sell most of them?

A. Dress trimmings; we buy them; we have no millinery department in our establishment; we buy them for dry-goods purposes. Whether our trade that buys them of us use them altogether for dry goods I am not prepared to say; we keep them as part of a general dry-goods stock. As to some of these samples (Nos. 508, 509, 510), we do not keep that class at all.

Cross-examination:

Our main business is retail; we sell some goods at wholesale; sometimes sell ribbons at wholesale in connection with all our business. We job more or less everything in our house. We have a manufacturing department where we use ribbons for manufacturing costumes; I buy the goods for that department—all of that
47 particular class for ornamenting dresses, trimmings, etc.; not the dress goods.

Q. These are all trimmings, all these goods?

A. Yes, sir; these are trimmings of some kind. We buy most of our goods, like these samples here that we deal in, in the domestic market of the manufacturers at the mill, a few of the prominent ones being Strange & Brother, Tolman & Meyer, Jacob Silverman, Whitney, Joseph Locke, Hammil & Booth; we buy of the principal domestic manufacturers of ribbons.

Q. Please name any domestic manufacturer of ribbons who makes fancy ribbons like that in these rolls (referring to plaintiff's samples here).

A. They all make some of those Jacquard patterns. I do not want the court to understand that all our fancy ribbons are domestic ribbons by any means, because they are a good part of them that cannot be made here at all; there are some fancy ribbons, however, that are manufactured; there are some fancy ribbons that cannot be made here; at least they have not yet been made here. I have never seen these (referring to samples 508, 509, and 510) made here; I should call them an imported article. There are some classes of ribbons which it is very difficult to tell whether they are imported or domestic. Some ribbons can be easily distinguished by an experienced man; as a rule, there is not much difficulty in distinguishing them.

Q. Have you bought largely at wholesale of the imported ribbons?

A. Yes, sir.

Q. Of what house? Name a few of the prominent ones.

48 A. Hoeninghaus & Curtiss, Dreyfus, Kohn & Co. I could refresh my recollection of names if I had brought my ledger here.

Q. The reason you are asked this question is for the next one: Can you state what is the chief and principal use of the imported ribbons?

A. For dress trimmings and millinery, I believe.

Q. Have you any knowledge other than from your own dry-goods business as to which of those two uses is the chief use of the imported articles?

A. Well, not knowing how much is used for millinery purposes, it is a question I am not prepared to answer.

Q. You would not venture an opinion on that subject?

A. Not being in the millinery business, no.

CHARLES R. RUGGLES, called for defendant, testified:

I am manager and buyer for Carson, Pire, Scott & Company, a

wholesale house—of the notion and ribbon department—and am famillar with the uses and purposes of ribbon in trade and commerce. We handle ribbons of the character shown me, but in different widths. It all depends on their usage. The ribbons we sell are entirely to the country merchants, to the jobbing trade. They use them principally for dress trimmings. Of course, we buy ribbon from all the people in New York. We also buy ribbons from some millinery houses that import them, and then sell them to the country merchants. We buy ribbons from almost every house in New York and sell them for dress-trimming purposes.

Cross-examination:

We have very few customers for millinery goods. We buy imported goods and import them. My attention has been called to the uses of imported ribbons.

49 Q. What should you say was the chief use of imported ribbons?

A. Well, it is for ornamentation of all kinds, and is used for a great many purposes, dress trimmings, ornamentation, fancy work.

Q. What is the proportion of imported ribbons, in your experience, as used by the millinery trade?

A. I think we use more largely domestic goods than we do imported. Most of the large dealers in New York sell domestic as well as imported goods. We buy goods of all the houses. I know the difference between plain ribbon and fancy ribbon, I suppose. A fancy ribbon is of a different coloring. They are made of all the combinations of color, and then the manufacturer puts a fancy name on them. Fancy ribbons like this (indicating) would be used for any kind of work it was adapted to.

Q. What should you say was the chief use of fancy ribbons—what kind of trimmings?

A. It all depends on what the character of the fancy ribbon is. Take a sash ribbon, it is used simply for a sash; dress trimmings also.

Q. Is there a class of ribbons which are readily distinguished for the purpose for which they are designed?

A. That is pretty hard to say, because we often have ribbons presented to us that the demands of fashion have thrown aside, and they are presented to us by the millinery trade. We buy them at a very cheap price and sell them to the country merchants, and they would sell them for dress trimmings.

Q. They would not be adapted, then, to the millinery trade?

A. Not if the millinery trade cast them aside. The millinery trade depends on the fashion and the demand for the article

50 in the millinery trade depends on the fashion. When a thing is in the mode, then it is particularly useful for the millinery trade. If the fashion demands ribbon the millinery trade uses them very largely. If fashion casts them aside they turn to flowers and feathers and all that class of goods. Our house have very little millinery trade. We buy domestic goods made by the millinery houses in New York.

Q. What should you say was the chief use of these articles, 508, 509, 510?

A. They can be used for millinery goods; they can be used for dress trimmings. The chief use is anything you want to apply them to—fancy work; it all depends. When they are first brought out they are probably brought out for the purpose they are adapted to; that may be millinery; it may be fancy work. If they are brought out for the millinery trade their merchantability depends upon the fashion and demand for that purpose. We have a millinery department at our retail store, but I have nothing to do with it; it is in charge of Mrs. McCormick, who is not here. They probably have in it goods of this character. We have a dress-making department. I suppose they have goods of the same character.

Q. Is it an every-day commercial transaction for the new fancy imported ribbons to be bought in large quantities exclusively for the purpose of putting on dresses?

A. Not large quantities; no, sir.

Q. That is rather an exceptional transaction?

A. I should fancy it was; yes, sir. We do not buy goods for the millinery trade. We sell goods all over the country—as far as the Pacific coast.

51 Miss —— WALLACE, called for the defendant, testified: I am buyer for the lace department at Partridge's main store, and am familiar with the class of goods before me from seeing them every day. This one (indicating) is exclusively a sash ribbon and is used for ornamenting dresses. These (508, 509, 510) can be used for different purposes; 509 is largely used for trimming dresses; 504, 506, 507 are used for different purposes—for millinery and dresses and fancy wear—anything that you can use a ribbon for.

Q. Is more of that kind of ribbon used for trimming dresses than for millinery purposes?

A. I think it is used just as much; it is a matter of taste with the buyer. As to these samples generally, some of these goods are used for fancy work and some of them for dress trimmings, and they are used for bonnets and hats. These goods are used for bonnets and for dresses and for wraps. This straw, I do not know of anything that it is used for except for a hat. That I would say was exclusively for a hat. These other goods are for trimmings for hats and bonnets, fancy goods, and dresses. I have none of this trimming on my dress; mine is jet. There is hardly a dress made that is trimmed at all but what would be with some of these samples, like some description like those; it may be in a different way. There are more jet trimmings and fancy trimmings used on dresses than on hats and bonnets such as this description. Here is a sample of jet trimming.

Cross-examination:

But this piece is made of wire; this on my dress is of thread. I have never bought any trimmings at all except for my own
52 use. I have never sold any at wholesale. I have sold some

goods out of the store when I have been called upon to wait on some friends at retail. Some of these trimmings come under the head of fancy goods. They are all trimmings of some description. I have visited wholesale houses, but I never do so in order to look at and buy those goods at wholesale. I buy laces exclusively—that is, for the store I am with. Of course, I buy goods for my own use.

Q. In buying laces have you not observed that there are some laces the merchantability of which depends on their use for hats?

A. Yes, sir.

Q. That is true of some laces?

A. Yes, sir; there are laces which are used for hat trimming, but they are used as well for fancy work, tinsel work, and such things. Here is one embroidered netting that really comes under the head of trimming. I am not prepared to say as to its chief use. I think it could be used for hat trimmings or for the bands on dresses—various purposes, most of it. I could not venture an opinion as to its prevailing or predominant use, because I do not sell in those departments and do not know how much they sell of them. Anything in the lace department I can tell you what is good for. I think these trimmings (indicating certain ribbons) could be used for different purposes—decorating—except this, which is only for a sash ribbon. What I have said is only the result of my own use and observation in this store. I have been with the firm between seven and eight years; have never bought any ribbon at wholesale, and only bought them for my own use. I don't use these ribbons in my business. We have a ribbon department in the store in charge of a lady named Rothschild, who is not here.

53 The COURT: You have on a hat there which is trimmed, apparently, to my eye, with a wing or feather?

A. Yes, sir.

Q. Is that hat made of a piece of silk or is it made of ribbon?

A. That is not made of ribbon, but trimmed with ribbon. The material is felt. The trimming is of ribbon. The body of the hat—the cap part—is all felt; the whole hat is made of felt, and then trimmed with blue ribbon corresponding in color.

Cross-examination continued:

Q. Is that the ordinary way of trimming hats and using ribbon?

A. It is used some. I think the prevailing style is lace at present in hats. That varies with the season of the year.

Q. What is your observation of the principal trimming that is always used—what is the chief trimming among all trimmings applied to hats and bonnets for years and years?

A. I should say the chief trimmings are flowers, feathers, and ribbons. Of course, those can be used for other purposes.

A. W. McLEAN, called for defendant, testified:

My business is dry goods, with Mandel Brothers, handling lace embroideries, handkerchiefs, neck-wear, and ribbons. This (indicating) is a sash ribbon pure and simple. This (indicating 504) we

use largely in our business. Our business is confined almost exclusively to the department of the dress-making trade. We handle ribbons of a similar character to these (indicating all the ribbons). We do not have a millinery department.

Q. Do you know what the samples upon your left hand are used for?

A. Those would not come under my department. Such trimming as this (indicating), this beaded net, occasionally that is used,
54 but we don't handle it very much. Trimmings of this character we keep in our trimming department. My knowledge is only generally in regard to these goods, but this class of goods I know are sold and used as dress trimmings to a certain extent.

Cross-examination:

The use of a trimming like this is a matter that is governed more or less by fashion than anything else.

Q. Is a wire used in trimming that is put on dresses?

A. I am not accustomed to use wire; I am not in the trimming department; I am speaking generally of that class of goods.

Q. You observe that the most of those trimmings have wire, do you not?

A. I call it tinsel. Tinsel is used in laces and it is used in dress trimmings to a very large extent. I should distinguish a wire to be something of the constituency of that piece of string. We have also what we call tinsel cord. We do not term that a wire. This is a sort of tinsel which is, perhaps, a cord. Sometimes it is made of solid metal and sometimes it is woven around a fabric to give substance, but we never term such a thing a wire. I should say the bulk of these goods were trimmings, which were appropriate for millinery purposes, but at the same time they are trimmings which are used; I think ninety per cent. of the demand for trimmings of this class of goods — for dress-making purposes, because the necessities of the trade demand a much larger quantity. I have nothing to do with them, only in a general way. We have no millinery department. My observation has been from my connection with the dry-goods business. My business at the present time is ribbons and laces. I buy ribbons at wholesale, such as these, and sell them at wholesale and retail to anybody that will buy. We can sell
55 these to the millinery trade very readily; also to the dress-making trade.

Q. Is it true that there is a class of ribbons that is not merchantable for millinery purposes?

A. I do not think there are any ribbons but what a milliner would use them if the fashion demanded it.

Q. In respect to the merchantability of a commodity is it not true that there are some ribbons that are not really merchantable as millinery commodities?

A. I think that is a matter that depends entirely upon the fashion. Dress-makers and millinery are guided entirely by what the fashion demands. If the fashion demands a perfectly plain ribbon

milliners will use it. If it requires a fancy ribbon they naturally get that. They are guided by fashion.

Q. Would you say a shoe ribbon was merchantable for millinery purposes?

A. We use ribbons sometimes for shoe ties; we sell them also for shoe ties.

Q. Have you seen very narrow ribbons that are used to tie up gloves with?

A. I have seen a few ladies with bows on their gloves and gloves tied up with ribbons in packages. I know some ribbons are exclusively used for what we call the finishing of all classes of goods—a sort of taffeta ribbon generally.

Q. Is that merchantable as a millinery commodity?

A. It is more exclusively used, I think, for dress-making, for finishing seams, and book binders use it a good deal.

Q. Would that be merchantable as a millinery commodity?

A. I do not think any reference to a taffeta ribbon would have any bearing on this case.

Q. What we wish to know is whether there are not some
56 ribbons which are not merchantable as millinery commodities.

ASSISTANT DISTRICT ATTORNEY: We will admit that.

A. (Witness.) My experience of twenty-five years has led me to believe that in a general sense a trimming ribbon can be used. I have hardly ever seen a trimming ribbon which could not be used or has not been used at some time or other as a millinery ribbon.

Q. Is it not true in trade that from time to time ribbons do come into the market which are not merchantable as millinery commodities?

A. That is a matter which is guided entirely by fashion. It has only been, I think, in the year 1887, two years ago this summer, that we imported any ribbon direct. The ribbons that we imported were—I don't think were any more a reflection as regards the styles than the fancy of our buyer, who was in Europe at that time. The uses for which we sold them were varied. We sold them very largely to the dress-making trade, our own dress-making establishment used them to a large extent, and we have a good many milliners who come to buy them, and they do not confine themselves to fancy ribbons. They buy all kinds of ribbons which are needed in their business. We have at times advertised ribbons for the millinery trade, and not only advertised them, but sent postal cards to every milliner in this city.

JOSEPH R. DICKINSON, recalled by the court, was asked:

The COURT: In this clause that is under consideration the term "willow sheets and squares" is used. What do they mean by that?

A. I understand that to mean one of the many trimmings that enter into articles of millinery—that is, one of the trimmings
57 of the millinery department.

Q. In 1883 probably there was such a commodity as that used in millinery?

A. Yes, sir.

(By plaintiff's counsel:)

Q. Are they used to-day; are there a great many kinds of them?
A. Yes, sir; and they are used to-day.

(By defendant's counsel:)

Q. What are they made of?
A. Straw and horsehair and a little cotton.

(By plaintiff's counsel:)

Q. The same thing about braids?
A. Yes, sir.
Q. I see mentioned in that paragraph braids, tissues, flats, laces. Are those all species of trimmings?
A. Yes, sir; they are all trimmings, and there are a great variety of each kind.
Q. They have been common for how many years?
A. For some time in the straw line they have not sold to any great extent.
Q. Such things have been common for a whole generation, have they not?
A. Yes, sir.

W. S. STEWART, called for defendant, testified:

I am manager for the dress-making department for Mandel Brothers, on State street, Chicago. We use most of these goods here in trimming dresses—that is, of this character of goods. There are some things there that I don't know that we use.

Q. To what extent are they used in trimming dresses?
A. They are used very largely. We make cloaks and jackets of that class of goods—that is, some of them—but not largely (referring to samples 504, 506, 507). We use that character of ribbons in dress-making exclusively, in the trimming of dresses. Samples 508, 509, 510 are used for dress trimmings to a large extent,
58 and so with the sash ribbon.

Cross-examination:

—. Do you buy and sell such things as these at wholesale?
A. No, sir; I do not buy or sell. I am engaged in manufacturing. I do not buy or sell the ribbons, but consume and deliver to the consumer, selling the dresses at retail. The house buys some of these trimmings in its stock. The house has no millinery department. It deals in all kinds of ribbons, all kinds of trimmings, and the trimmings are assigned to my department as I may require them, and there we consume them. I do not trim hats. I am not posted at all in millinery goods.
Q. You would not venture an opinion as to the chief use of the commodity that is imported, speaking of the importations that come into the country, would you?
A. No, sir; I would not. I only know we use some of these

articles for dress trimmings; some we do not use; that is as far as my experience has gone. Here is a braid or a cord of this style that could be used for dress trimmings, but I don't know that I ever had occasion to use this particular style of cord. These beaded trimmings and jets and tinsels and all that kind of goods we use; some we do not use.

Q. You do not mean to say those are not millinery commodities as well, do you?

A. They can use them for millinery purposes. We very often have our customers say they would like to have a piece of that trimming put into a hat or bonnet and take it with them.

This was all the evidence offered on the part of the defendant.

The plaintiff, further to maintain the issues on his part, in-
59 troduced, by leave of the court, which had been reserved in respect to this witness, who was absent when heretofore called, the following testimony:

H. I. MILLS, a witness called for the plaintiff, testified:

I am in charge of the ribbon department of Marshal Field & Co., buying and selling ribbons at wholesale. We import some. I am more or less familiar with such fancy ribbons as those I see in court.

Q. What should you say was the chief use of that ribbon as a merchantable commodity (referring to samples 504, 506, 507)?

A. In buying these goods I should think they were going to be used principally for bonnet trimmings, although they might be used for various other purposes. There are so many ribbons being used at the present time that it is hard to tell what they do with half of them, but at a glance I should say that the bulk of half that stock would be used for bonnets.

Q. What are the staple trimmings for millinery purposes that you deal in?

A. Ribbons is all. That is the reason I can testify to those. In buying that class of stock I should buy it with reference to the millinery trade, but a dry-goods man might buy it for some other purpose. This department is entirely by itself with us. I might buy it for millinery purposes and a change in the style of fashion would make it absolutely unsalable for millinery purposes in a few weeks or months. That would depreciate its merchantability.

Cross-examination:

Q. Might it not become less merchantable for millinery pur-
60 poses and still be merchantable for other purposes?

A. Not that particular class of stuff. I should not think so. No.

The plaintiff's counsel then, as evidence in rebuttal, offered to prove by Mr. Hagedon, the plaintiff, that he has tried in Chicago to procure the same kind of goods as are represented by the importations in controversy and is unable to do so in this market.

The COURT: I do not think it is proper rebuttal.

To which ruling of the court plaintiff's counsel then and there duly excepted.

The foregoing was all the testimony offered by either of said parties on the trial of said cause. At the close of the testimony the defendant's counsel moved that the court direct the jury to find a verdict for the defendant; which motion was denied by the court. Plaintiff's counsel moved that the court direct the jury to return a verdict for the plaintiff as to such of the samples as defendant offered no evidence upon; which motion was overruled and refused by the court; to this ruling of the court the plaintiff, by his counsel, then and there duly excepted.

Prayers for instruction to the jury were then submitted on the part of the plaintiff, and counsel for the respective parties summed up the case to the jury. The said prayers for instructions and the plaintiff's exceptions thereto are as follows:

1. Plaintiff's counsel excepted to the refusal of the court to instruct the jury according to the following prayer for instruction: "That it is the use to which these articles are chiefly adapted and for which they are used which determine their character within the meaning of this clause of the tariff act."

Plaintiff's counsel duly excepted to the refusal of the court
61 to charge in the language of the foregoing request.

2. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "That the predominant use to which these articles are applied determines their character, so that if they are trimmings and are chiefly used for making and ornamenting hats the duty imposed was excessive, and the plaintiff is entitled to recover the excess." Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

3. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "If the evidence shows that if the goods upon which the duty was charged are adapted to use and are used for various purposes other than for trimming hats, then the jury must be satisfied that the use to which they are chiefly applicable and for which they were imported was in making and ornamenting hats, bonnets, or hoods to bring them within the scope of the clause of the tariff act imposing a duty of 20 per cent."

Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

4. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "Where the articles are specially described in one section of the tariff act and a duty so imposed thereon, general terms in the same act, although sufficient to comprehend such articles under a higher rate of classification, are not applicable to it and will not prevail to impose such higher rate of duty, so that if

the jury find the goods in question are trimmings which are
62 chiefly used for making and ornamenting hats, bonnets, or hoods, then, although silk or metal be the component material of chief value, the verdict should be for the plaintiff." Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

5. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "If the jury find the goods in question are known as trimmings used for making or ornamenting hats, bonnets, or hoods, although they may occasionally be used for other purposes, the verdict should be for the plaintiff." Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

6. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "That the evidence in this case shows the goods in question are spoken of as 'trimmings,' manifestly according to the natural meaning of the word and because they are used to trim something with. The term 'trimming' is not technical and should be given its popular signification or natural import." Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

7. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "The real controversy in this case is, For what purpose as trimmings are the commodities principally used? and it is not necessary, in order to establish the plaintiff's claim in this case, that the goods in question should be exclusively used and employed as hat and bonnet trimmings; but if the
63 jury are satisfied from the evidence that the goods in question were imported by dealers in millinery trimmings for use in making or ornamenting hats, bonnets, or hoods, and that when they were bought and sold by wholesale dealers they were intended to be used chiefly for that purpose, they should be classified for duty under the clause in the tariff specially providing that such trimmings not specially elsewhere enumerated or provided for, and should be dutiable at 20 per centum, and the verdict should be for the plaintiff." Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

8. Plaintiff likewise also excepted to the refusal of the court to instruct the jury as follows: "If the jury find that there exists a class of commodities easily distinguished because of their adaptation for millinery purposes, and that — have their substantial commercial value because of their adaptation and chief use in making or ornamenting hats, bonnets, or hoods, and that the trimmings in question belong to that class, then the verdict should be for the plaintiff." Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

9. Plaintiff also requested the court to instruct the jury as follows: "That if the jury find that the plaintiff imported the balance of the trimmings or any of them for his own use in making and ornamenting hats or bonnets, and so used them, plaintiff is entitled to a verdict;" which request was denied and refused by the court. Plaintiff's counsel duly excepted to the refusal of the court to charge in the language of the foregoing request.

64 The court then charged the jury as follows:

This suit is brought to recover certain moneys paid by the plaintiff to the defendant as collector of customs of the port of Chi-

cago which the plaintiff claims — illegally assessed by the defendant as such collector upon goods imported by the plaintiff.

The plaintiff entered these goods as "materials for making and ornamenting hats, bonnets, and hoods," and as such subject to a duty of 20 per cent. ad valorem, pursuant to clause 448 of Hyel's Compilation of the U. S. Revenue Laws, which I will read to you: "Hats, etc., materials for; braids, plaits, flats, laces, trimmings, tissues, willow sheets, and squares used for making or ornamenting hats, bonnets, and hoods composed of straw, chip, grass, palm leaf, willow, hair, whalebone, or any other substance or material not especially enumerated or provided for in this act, 20 per centum ad valorem."

You all know in a general business way what 20 per centum ad valorem means. It means 20 per centum computed upon the value of the goods as shown by the invoice or fixed by the collector.

The collector classed these goods as gimps, braids, galloons, ribbons, bead-work, etc., and assessed duties upon them at from 45 to 50 per centum ad valorem, according to the chief material of which they are composed—that is, those which were mainly silk he assessed as goods composed of silk or of which silk was the component material of chief value at 50 per centum ad valorem; those which were composed largely of metal wires in various forms or metal tissue or tinsel were assessed as manufactures of metal or of
65 which metal was the component material of chief value at 45 per centum ad valorem.

The plaintiff paid the duties so assessed under protest and now brings this suit, as he is allowed to do by law, to recover the excess duties so, as he claims, illegally exacted from him, and the question raised is whether these goods should have been assessed for duty at 20 per cent. ad valorem.

These goods in question form parts of several invoices, and samples of them are in evidence before you, each sample properly ticketed, so that you will be able to take up each class of goods and consider the evidence applicable to it in a methodical and systematic manner.

The sole question in the case is: Are these goods materials for making and ornamenting hats, bonnets, and hoods, and as such liable only to a duty of 20 per cent. ad valorem? It is not at all a question whether the collector erred in assessing under some one or two other clauses of the law, but whether it was his duty under the law to have passed these goods as material for making and ornamenting hats and assessed them at a duty of 20 per cent. ad valorem.

The testimony on the part of the plaintiff tends to show that the goods in question are chiefly used as materials for making and ornamenting hats, bonnets, and hoods. Sample No. 239, which is the broad piece of ribbon which is in evidence here, the testimony of only one witness tends to show is millinery or hat material. The other witnesses, if I remember, both for the plaintiff and the defendant, all testify that it is what is known in the trade as a
66 "sash ribbon;" and sample No. 32*a*, all the witnesses concur,

is a bonnet trimming or used exclusively for that purpose, it being composed of straw and metal wire or metal tinsel, while on the part of the defendant the proof tends to show that the goods represented by these other samples are not used chiefly for hat, bonnet, and hood materials or ornaments, but that they are much more largely used for trimming and ornamenting ladies' dresses, cloaks, jackets, etc.—that is, that the predominating or chief use to which they are put is not in the making and ornamenting of hats, etc., but that they have other uses to such a controlling extent as to take them out of the hat-material clause.

It is your province to weigh this evidence and say whether the proof satisfies you that all or any part of the goods represented by the samples are goods the chief and predominating use of which is in the making and ornamenting of hats, bonnets, and hoods. Your own experience and common knowledge will teach you that there is hardly any article, however specific and exclusive may be the use for which it was designed and made, but what may under emergencies or from caprice be applied to another use or uses; but the question here is, What is the main, ordinary, natural use for which these goods were designed and intended? Are they all or any of them designed or intended so exclusively for hat, bonnet, and hood materials and ornaments that you can say from the proof that they were not equally adapted to and intended for dress material and trimmings, or for other uses than hat material and ornaments? If you find from the proof that the chief and predominating use of the goods in question or any part of them is
67 for the making and ornamenting of hats, bonnets, or hoods, then it was the duty of the collector to have classed them under this clause 448 and assessed them only at 20 per cent. ad valorem duty, and your verdict should be for the plaintiff to the extent of your finding in that regard, while if the proof satisfies you that the chief and predominating use was not for materials and ornaments for hats, bonnets, and hoods, but that they were also as generally used for trimming or ornamenting dresses, or, in fact, applied to any other use than for making or ornamenting hats, bonnets, or hoods, then you should find the issues for the defendant as far as the proof justifies you.

Much of the controversy here is in regard to the ribbon goods represented by the samples numbered, I think, from 504 to 515. These goods or most of them, as I remember the testimony, are largely, as the testimony tends to show, composed of silk or silk as the material of chief value, and the testimony also tends to show that such ribbons have many other uses than for materials and ornaments for hats, bonnets, and hoods; and if the proof satisfies you that their chief use is not for hat material and trimmings, and also satisfies you that they are manufactures of silk, or that silk is the material of chief value, then you should find for the defendant as to those goods; while, on the contrary, if you find from the proof that their chief and, as I may say, their popular and general use is as a hat material, then you should find for the plaintiff as to those goods.

Bear in mind, gentlemen, that it is not the person who imports or sells these good that determines their dutiable classification,
68 but it is the chief use to which they are adapted and put; and while it may be true that goods sold from the stores of dealers in millinery goods like this plaintiff would be more generally used for making or ornamenting hats, bonnets, and hoods, yet the question under the proof in this case is whether these goods are not so generally sold and dealt in by merchants for other uses as to destroy the claim that they are such hat or bonnet material only as come within the provisions of clause 448.

The plaintiff in this case has the burden of proof. He is not entitled to recover unless he satisfies you by a preponderance of the evidence that the chief and predominating use of these goods is for hat material and ornaments, and if the proof fails to so satisfy you your verdict should be for the defendant. If, after considering the proof applicable to each sample, you find that any of these goods should have been passed by the collector as material for making and ornamenting hats, bonnets, and hoods, then you should find the issue for the plaintiff as to such goods, while if you find that all or any of these goods ought not to have been so classed as material for making or ornamenting hats, bonnets, and hoods, then your verdict should be for the defendant to the extent of such finding. For example, if you find from the proof that the ribbons in question are not so exclusively used for making or ornamenting hats as to make that their main or predominating use, then you should find the issue for the defendant as to such goods. If you find under the evidence that all the goods in question are hat trimmings, then your
69 verdict should be for the plaintiff as to the whole case. If you find that none of these goods are from their chief and predominating use hat materials, then your verdict should be for the defendant.

If you find that part of the goods only are hat materials, then your verdict should be for the plaintiff as to such as you so find, and as to the remainder it should be for the defendant.

Plaintiff's counsel further excepted to that part of the charge where the court said, "While on the part of the defendant the proof tends to show that the goods represented by these other samples are not chiefly for hat, bonnet, and hood materials or ornaments, but that they are much more largely used for trimming and ornamenting ladies' dresses, cloaks, jackets, &c.—that is, that the predominating or chief use to which they are put is not in the making or ornamenting of hats, &c., but that they have other uses to such a controlling extent as to take them out of the hat-material clause which is covered by 448."

Plaintiff's counsel likewise excepted to the following portion of the charge of the court: "While if the proof satisfies you that the chief and predominating use was not for material and ornaments for hats, bonnets, and hoods, but that they were also as generally used for trimming or ornamenting dresses, or, in fact, applied to any other use than for making or ornamenting hats, bonnets, or hoods,

then you should find the issues for the defendant as far as the proof justifies you."

Plaintiff's counsel likewise excepted to the following portion
70 of said charge: "Yet the question under the proof in this case is whether these goods are not so generally sold and dealt in by merchants for other uses as to destroy the claim that they are such hats or bonnet material only as come within the provisions of clause 448."

Plaintiff's counsel likewise excepted to the following portion of said charge: "While if you find that all or any of these goods ought not to have been so classed as materials for making or ornamenting hats, bonnets, and hoods, then your verdict should be for the defendant to the extent of such finding."

Plaintiff's counsel likewise excepted to the following portion of said charge: "For example, if you find from the proof that the ribbons in question are not so exclusively used for making or ornamenting hats as to make that their main or predominating use, then you should find the issue for the defendant as to such goods."

Plaintiff's counsel also excepted to the refusal of the court to direct a verdict for the plaintiff, as moved for, "as to such of the samples as defendant has offered no testimony upon," the court having denied such motion and refused such a direction, and the exception was allowed by the court.

The jury then, under said charge and exceptions, returned a verdict for the plaintiff for two hundred forty-nine dollars and five cents instead of a verdict for plaintiff for five hundred and thirty-five dollars and eighty cents, as claimed by plaintiff, the difference between the amount of the verdict and the amount of the
71 said claim being represented by the claims disallowed the plaintiff by the verdict of the jury.

Plaintiff claims that this disallowance by the jury is in consequence of the alleged errors or some of them indicated by the foregoing exceptions to the rulings of the court, as set forth in this bill.

And inasmuch as the foregoing matters do not appear by the judgment record in this case, therefore, on the prayer of the plaintiff's counsel, the foregoing has been settled and signed by the judge who tried the same.

Witness my hand and seal.

H. W. BLODGETT, *Judge.*

Endorsed: Filed May 20, 1889. Wm. H. Bradley, clerk.

72 Afterwards, to wit, on the twenty-first day of May, 1889, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

U. S. Circuit Court, Northern Dist. Ill.

HAGEDON
vs.
SEEBERGER.

It is stipulated that the samples of trimmings in evidence in the above-entitled cause may be transmitted with the record to the Supreme Court of the United States upon any writ of error which may be prosecuted by either party.

PERCY L. SHUMAN,
Att'y for Pl'ff.
W. G. EWING,
U. S. Att'y, for Def't.

Chicago, May 21, '89.

(Endorsed:) Filed May 21, 1889. Wm. H. Bradley, clerk.

73 Afterwards, to wit, on the fifth day of June, 1889, there was filed in said clerk's office a bond in said entitled cause; which said bond is in the words and figures following, to wit:

Bond.

Know all men by these presents that we, William H. Hagedon & George W. Sheldon, are held and firmly bound unto Anthony F. Seeberger, collector of customs of the port and district of Chicago, in the full and just sum of five hundred dollars, to be paid to the said Anthony F. Seeberger, as collector, or to his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas lately, at a term of the circuit court of the United States for the northern district of Illinois, in a suit depending in said court between Wm. H. Hagedon as plaintiff and Anthony F. Seeberger, collector aforesaid, a judgment was rendered against the said Anthony F. Seeberger, defendant; and the said Wm. H. Hagedon having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anthony F. Seeberger, collector, &c., citing and admonishing him to be and appear at a Supreme
74 Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Wm. H. Hagedon shall prosecute his writ of error to effect and an-

swer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

WILLIAM H. HAGEDON. [SEAL.]
GEORGE W. SHELDON. [SEAL.]

Approved by—
H. W. BLODGETT, *Judge.*

(Endorsed:) Filed June 5, 1889. Wm. H. Bradley, clerk.

75 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court (except the defendant's bill of exceptions, which is omitted from the record by direction of the plaintiff's attorneys) in the cause wherein William H. Hagedon is the plaintiff and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, northern division, this twenty-ninth day of June, 1889.

WM. H. BRADLEY, *Clerk.*

76 UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court, between William H. Hagedon, plaintiff, and Anthony F. Seeberger, collector, &c., defendant, in an action of assumpsit, a manifest error hath happened, to the great damage of the said William H. Hagedon, plaintiff, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1889, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error

what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this twenty-second day of May, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the 113th year.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

WM. H. BRADLEY,
Clerk of the United States Circuit Court for the Northern District of Illinois.

[Endorsed:] Supreme Court of the United States. William H. Hagedon, plaintiff in error, *vs.* A. F. Seeberger, collector, defendant in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

77 UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

To Anthony F. Seeberger, collector of customs of the port and district of Chicago, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1889, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Wm. H. Hagedon was plaintiff and Anthony F. Seeberger, collector, &c., was defendant, to show cause, if any there be, why the error in the said judgment mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this fifth day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

H. W. BLODGETT, *Judge.*

Service of this citation hereby accepted.
June 5, '89.

W. G. EWING,
U. S. Att'y.

[Endorsed:] Supreme Court of the United States. Wm. H. Hagedon *vs.* Anthony F. Seeberger, collector. Citation to October term, A. D. 1889.

78 Supreme Court of the United States.

WILLIAM H. HAGEDON, Plaintiff in Error,
against
—— SEEBERGER, Collector of the Port of Chicago, Defendant in Error. } Assignment of Error.

Afterwards, to wit, on the second Monday of October term, 1889,

before the justices of the said court, at the Capitol, at Washington, comes the said plaintiff in error, by Percy L. Shuman, Esq., his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

In each and every of the several rulings of the said court to which exceptions were taken by the plaintiff; and in the refusals of the court to admit testimony and to exclude testimony, to which refusal to admit and refusal to exclude due objections were made and exceptions severally taken by the plaintiff; and in the refusal of the court to direct the jury in the manner prayed for by the plaintiff; and in the refusal of the court to charge the jury in manner and form as in writing requested by the plaintiff, to which refusals exceptions severally were taken by the plaintiff; and in the in-
79 structions of the court as given to the jury, in so far as the same are made the subject of the several exceptions taken by plaintiff to said charge, as set forth in the plaintiff's bill of exceptions; and in other respects where exceptions were taken by and allowed to plaintiff, there was manifest error, as more fully and at large appears by the said bill of plaintiff's exceptions, as the same appears of record; and that by the record aforesaid it appears that the judgment in form aforesaid was given for a part of the claim of the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff in error against the said defendant in error for an amount larger than that given.

And the said plaintiff in error prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings, as the same appear more fully therein, may be corrected and that done which of right and according to law should be done, and that he, the plaintiff in error, may be restored to those things which he has lost by reason of said judgment, &c.

PERCY L. SHUMAN,
Attorney for Plaintiff in Error.

Endorsed on cover: N. Illinois C. C. U. S. No. 1183. William H. Hagedon, plaintiff in error, *vs.* Anthony F. Seeberger, collector of customs for the port and district of Chicago. Filed July 26, 1889.